

Merit Systems Protection Board

§ 1203.2

Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Albuquerque, New Mexico
Bismarck, North Dakota
Fargo, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

[69 FR 11503, Mar. 11, 2004, as amended at 69 FR 61991, Oct. 22, 2004]

APPENDIX IV TO PART 1201—SAMPLE DECLARATION UNDER 28 U.S.C.1746

Declaration

I, _____, do hereby declare:
I declare under penalty of perjury under
the laws of the United States of America
that the foregoing is true and correct.
Executed on _____

Date

Signature

PART 1202—STATUTORY REVIEW BOARD

AUTHORITY: 5 U.S.C. 1204.

§ 1202.1 Designating Chairman of Statutory Review Board.

At the written request of the Department of Transportation, the Chairman of the Board will designate a presiding official of the Board to serve as the Chairman of any Board of Review established by the Secretary of Transportation under 5 U.S.C. 3383(b) to review certain actions to remove air traffic controllers.

[54 FR 28658, July 6, 1989]

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

GENERAL

Sec.

1203.1 Scope; application of part 1201, subpart B.

1203.2 Definitions.

PROCEDURES FOR REVIEW

- 1203.11 Request for regulation review.
- 1203.12 Granting or denying the request for regulation review.
- 1203.13 Filing pleadings.
- 1203.14 Serving documents.
- 1203.15 Review of regulations on the Board's own motion.
- 1203.16 Proceedings.

ORDER OF THE BOARD

- 1203.21 Final order of the Board.
- 1203.22 Enforcement of order.

AUTHORITY: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

SOURCE: 54 FR 23632, June 2, 1989, unless otherwise noted.

GENERAL

§ 1203.1 Scope; application of part 1201, subpart B.

(a) *General.* This part applies to the Board's review, under 5 U.S.C. 1204(a)(4) and 1204(f), of any rules or regulations ("regulations") issued by the Office of Personnel Management (OPM). It applies to the Board's review of the way in which an agency implements regulations, as well as to its review of the validity of the regulations on their face.

(b) *Application of 5 CFR part 1201, subparts B and C.* (1) Where appropriate, and unless the Board's regulations provide otherwise, the Board may apply the provisions of 5 CFR part 1201, subpart B to proceedings conducted under this part. It may do so on its own motion or on the motion of a party to these proceedings.

(2) The following provisions of 5 CFR part 1201, subparts B and C do not apply to proceedings conducted under this part:

(i) Sections 1201.21 through 1201.27 which concern petitions for appeal of agency actions, and the pleadings that are filed in connection with those petitions; and

(ii) Sections 1201.111 through 1201.119 which concern final decisions of presiding officials, and petitions for Board review of those decisions.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989]

§ 1203.2 Definitions.

(a) *Invalid regulation* means a regulation that has been issued by OPM, and

§ 1203.11

5 CFR Ch. II (1–1–05 Edition)

that, on its face, would require an employee to commit a prohibited personnel practice if any agency implemented the regulation.

(b) *Invalidly implemented regulation* means a regulation, issued by OPM, whose implementation by an agency has required an employee to commit a prohibited personnel practice. A valid regulation may be invalidly implemented.

(c) *Merit system principles* are the principles stated in 5 U.S.C. 2301(b)(1) through 2301(b)(9).

(d) *Pleadings* are written submissions containing claims, allegations, arguments, or evidence. They include briefs, motions, requests for regulation review, responses, replies, and attachments that are submitted in connection with proceedings under this part.

(e) *Prohibited personnel practices* are the impermissible actions described in 5 U.S.C. 2302(b)(1) through 2302(b)(11).

(f) *Regulation review* means the procedure under which the Board, under 5 U.S.C. 1204(f), reviews regulations issued by OPM on their face, or reviews those regulations as they have been implemented, or both, in order to determine whether the regulations require any employee to commit a prohibited personnel practice.

(g) *Request for regulation review* means a request that the Board review a regulation issued by OPM.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989]

PROCEDURES FOR REVIEW

§ 1203.11 Request for regulation review.

(a) An interested person or the Special Counsel may submit a request for regulation review.

(b) Contents of request. (1) Each request for regulation review must include the following information:

(i) The name, address, and signature of the requester's representative or, if the requester has no representative, of the requester;

(ii) A citation identifying the regulation being challenged;

(iii) A statement (along with any relevant documents) describing in detail the reasons why the regulation would require an employee to commit a pro-

hibited personnel practice; or the reasons why the implementation of the regulation requires an employee to commit a prohibited personnel practice;

(iv) Specific identification of the prohibited personnel practice at issue; and

(v) A description of the action the requester would like the Board to take.

(2) If the prohibited personnel practice at issue is one prohibited by 5 U.S.C. 2302(b)(12), the request must include the following additional information:

(i) Identification of the law or regulation that allegedly would be or has been violated, and how it would be or has been violated; and

(ii) Identification of the merit system principles at issue and an explanation of the way in which the law or regulation at issue implements or directly concerns those principles.

[54 FR 23632, June 2, 1989, as amended at 65 FR 57939, Sept. 27, 2000]

§ 1203.12 Granting or denying the request for regulation review.

(a) The Board, in its sole discretion, may grant or deny an interested person's request for regulation review. It will grant a request for regulation review that the Special Counsel submits. It will not, however, review a regulation before its effective date.

(b) After considering the request for regulation review, the Board will issue an order granting or denying the request in whole or in part. Orders in which the Board grants the request, in whole or in part, will identify the agency or agencies involved, if any. They also will include the following:

(1) A citation identifying the regulation being challenged;

(2) A description of the issues to be addressed;

(3) The docket number assigned to the proceedings; and

(4) Instructions covering the review proceedings, including information regarding the time limits for filing submissions related to the request.

[54 FR 23632, June 2, 1989, as amended at 56 FR 41749, Aug. 23, 1991]

§ 1203.13 Filing pleadings.

(a) *Place to file and number of copies.* One original and three copies of each